



## OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL*Pepper Co.*

May 9, 1939

Hon. Jay Sam Levey  
Assistant District Attorney  
San Antonio, Texas

Dear Sir:

Opinion No. 0-725

Re: Necessity of registration under  
the assumed name statute.

This will acknowledge receipt of your letter of April 28, 1939, in which you submit for an opinion of this Department the question of whether or not the use of the following names comes within and requires the users thereof to register under the assumed name statute of this state:

1. Gene Irwin Service Station (owned and operated by Eugene Irwin).
2. Pavlue Grocery & Market (owned and operated by J. E. Pavlue).
3. John's Garage (owned and operated by John Mitchell).

Article 5924, Revised Civil Statutes of Texas, 1925, reads:

"No person shall conduct or transact business in this State under any assumed name or under any designation, name, style, corporate or otherwise other than the real name of each individual conducting or transacting such business, unless such person shall file in the office of the county clerk of the counties in which such person conducts, or transacts or intends to conduct or transact such business, a certificate setting forth the name under which such business is, or is

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to be, conducted or transacted, and the true full name or names of each person conducting or transacting the same, with the post-office address of each. Said certificate shall be executed and duly acknowledged by the persons so conducting or intending to conduct said business in the manner provided for acknowledgment of conveyance of real estate."

Article 1067 and 1070, Penal Code of Texas 1925, constitute the penal provisions for the violation of Article 5924, supra.

A careful examination of the authorities does not reveal that our Texas courts have established any rule for the determination of what constitutes a violation of the assumed name law.

The courts in construing statutes similar to the Texas statutes have looked to the legislative intent behind the passage of such statutes. The Court of Appeals of Kentucky in the case of Warren Oil & Gas Company vs. Gardner, 212 SW 456, says:

"The object of the statute is to enable the public, as well as those who deal with the concern, to ascertain definitely who is the person or persons behind the business in case litigation arises. The statute is a part of the public policy of the state and was intended to protect and safeguard the rights of citizens."

This statement of the purpose of a similar statute was likewise announced in the case of Acme Drilling Company vs. Gorman Oil Syndicate, 249 NW 1003.

The court said of a similar statute of Montana in the case of Canonica vs. St. George, 208 Pac. 607:

"The object of the statute is to prohibit persons from concealing their identity in their business transactions under the cloak of assumed or fictitious names; if the identity is not disclosed in the name or designation employed, then it must be disclosed in the public record provided for that purpose."

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The public, in dealing with a corporation, can ascertain the nature of the organization and can obtain sufficient data with respect to the parties who compose it upon which to predicate a suit by inquiry of the Secretary of State. The Legislature, in its wisdom, passed the assumed name law for the purpose of requiring all individuals and organizations, other than corporations, to file information reflecting the ownership thereof with the county clerk of the county in which such individual or organizations conduct business, in the event they operate under any but "the real name of each individual."

The test of whether or not the assumed names made the basis of your inquiry must be registered as required by Article 5924, supra, must be whether or not the names as adopted are sufficient to put the public upon notice as to the party or parties with whom they are dealing. Can the public be required to walk into one of these places of business and inquire as to the true owners thereof before being able to assert some cause of action? In so doing, what assurance does the public have that they are being furnished the correct information? The answer is apparent that the public has the right to seek and obtain information from some reliable source as to the owners of a business with which it does business.

It is therefore, the opinion of this Department and you are so advised that none of the names submitted are sufficient to put the public upon notice as to the true owners thereof and each should be registered under the provisions of Article 5924, supra.

Trusting that this sufficiently answers your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Lloyd Armstrong*  
Lloyd Armstrong  
Assistant

LA:AW

APPROVED:

*Gerald B. Mann*  
ATTORNEY GENERAL OF TEXAS